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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,150	01/27/2001	Brian L. Whitworth		7995

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EXAMINER

THEIN, MARIA TERESA T

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/770,150

Applicant(s)

WHITWORTH, BRIAN L.

Examiner

Marissa Thein

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on January 27, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 33-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1-27-2001.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I, claims 1-32 in the reply filed on October 27, 2004 is acknowledged.

Claims 1-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 27, 2004.

Applicants are respectfully requested to cancel the non-elected claims in response to the Office Action.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) was submitted on January 27, 2001 is being considered. However, the "other prior art" section of the 1449 was not considered because a copy of each of the web pages were not provided.

### ***Drawings***

The drawings filed on January 27, 2001 are acceptable.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-32 are rejected under 35 U.S.C. §101 because the claimed invention is directed to a non statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

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- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. In the present case, claim 1 recites an abstract idea and has no connection to the technological arts. The recited step is not directed to anything in the technological arts. The recitation of "displaying at least one image of an item for sale or auction via the Internet ....." has no structural or functional interrelationship with the method, which could be performed manually by a person. Therefore, the claim is directed towards non-statutory subject matter. To overcome this rejection, the Examiner recommends the Applicant to amend the claims to better clarify that the step is being performed within the technological arts, such as --displaying on an interface via a computer network at least one image of an item for sale or auction.....--.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "the user" lacks antecedent basis.

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Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites the conditional statement "can be saved...", which renders the claim indefinite since it is unclear to the Examiner what the scope of the claim is when the conditional statement is false. The Applicant should consider rewriting the claim language to avoid the use of conditional statements. For examination purposes, the Examiner will take the broadest reasonable interpretation of the claim and assume the claim recites as "being saved".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-15, 20-26 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,307,568 to Rom.**

Regarding claim 1, Rom disclose a method of displaying at least one image of an item for sale or auction (purchase goods and services through Internet) via the Internet wherein one or more images (garments picture, Figure 1) of items for sale or auction are displayed simultaneously with one or more images (photograph of user) provided a

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potential buyer (display an image of a garment as though the garment was being worn by the user, col. 4, lines 34-36).

Regarding claims 2-9, the recitations of different images for sale or auction which include artwork, sculpture, collectibles drapes, curtains, window shades, blinds, hairstyles and hair care products, plants, landscaping, exterior home improvements, clothing, furniture, fitness equipment, home electronics cars, and live animals, such recitations are given little patentable weight because they impart no structural or functional specificity which serves to patentably distinguish the instant invention from the other "images for sale or auction" already disclosed by Rom.

Regarding claims 10 -14, Rom discloses overlying images of one item at a time on an image provided by a potential buyer (output image is a composite image of the garment dressed on the image of the user, col. 6, lines 17-19); overlaying images of two or more items at a time on an image provided by a potential buyer (col. 4, lines 63-65; col. 6, lines 54-61); overlaying one or more images provided by a potential buyer (providing a picture of a body of the user through the Internet; col. 2, lines 24-25) on an image provided by the website (displaying the web page with at least one garment, the selecting of at least one garment from the web page; col. 2, lines 24-26); displaying images of one item at a time next to an image provided by a potential buyer (see at least col. 2, lines 23-27); displaying images of two or more items at a time next to an image provided by a potential buyer (see at least col. 4, lines 63-65; col. 6, lines 54-61).

Regarding claims 15, 20-26, Rom discloses the image submitted by the user is an image of all or part of a person (ref. no. 10, Figure 1; initial image could include a

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plurality of few photographs preferably of different angles or sides of the user, col. 4, lines 47-50); printing one or more of the images (output image); the display simulates the appearance of one or more items in consideration of characteristics of images selected from the group consisting colors and lighting conditions (col. 5, line 65 – col. 6, line 12); the simulation adjusts for lighting condition selected from the set of sunlight, incandescent light fluorescent light and halogen light (col. 5, line 65 – col. 6, line 12); the simulation places the image of an item in a position where a buyer might place the item or items (col. 5, line 65 – col. 6, line 12); the simulation sizes images of one or more items and an image of a place where a buyer might put such items so that the relative sizes of the images approximates their relative sizes in the real world (col. 2, lines 22-32; col. 5, lines 56-63); the simulation adjusts images of one or more items and an image of a place where a buyer might put such items to match the relative viewing perspectives (col. 2, lines 22-32; col. 5, lines 56-63); the image of one ore more items for sale or auction are overlaid on an image provided by a potential buyer by using the HTML layer command (col. 2, lines 23-33).

Regarding claim 30, Rom discloses one or more images have standard characteristics selected from the group consisting of standard colors displayed within the image, standard lighting conditions, a test pattern display within the image, and a scale of measurement (see at least col. 2, lines 63-64; col. 5, lines 66-67).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,307,658 to Rom in view of U.S. Patent No. 5,930,769 to Rose.**

Regarding claims 16 and 18, Rom substantially discloses the claimed invention, however, it does not disclose an image of a model displayed is combined with an image submitted by a user over the Internet, to create at least one image, which is a mixture of both image; and images are combined using morphing technology. Rom discloses critical points are taken from the image of the user and are used to adjust the spatial configuration of the clothing. The critical points within the volume of the article of clothing are adjusted to match the critical points of the image of the body of the user. (Col. 1, lines 52-56)

Rose, on the other hand, teaches an image of a model displayed (shows a body frame illustrating the body measurement, col. 3, lines 47-48; Figure 1) is combined with an image submitted by a user (may also submit a photograph of her face, col. 3, lines 56-57) over the Internet, to create at least one image, which is a mixture of both image (simulating body type matching her own body type and having her own face, col. 2, lines 7-9); and images are combined using morphing technology (col. 2, lines 7-9).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Rom, to include the creation of at least one image which is a mixture of both images and morphing technology, as taught by Rose,

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in order to facilitate opportunities for a customer to try on the clothes by seeing a simulated type matching her own body type and having her own face (col. 2, line 6-9).

Regarding claims 17 and 19, Rom discloses the image of a model is a human model (photographs of the user, col. 1, lines 50-52); the image submitted by a user is an image of a different human (could supply an image of some else for whom the user wished to purchase clothing, such as a child, col. 4, lines 37-40); and images are combined to create multiple images with varying degrees of similarity to the image submitted by user (col. 5, lines 22-25).

**Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,307,658 to Rom in view of World Publication No. 99/26415 to Bar-El et al.**

Regarding claim 27, Rom substantially discloses the claimed invention, however, it does not disclose one or more moving or animated images. Rom discloses an image of a user over the Internet (col. 3, lines 64-65). The image of the use is derived from a photo or photographs of the user, from a video stream, and/or from additional information (col. 3, lines 65-67). Bar-El, on the other hand, teaches the one or more moving animated images (video stream).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Rom, to include the moving or animated image, in order to provide a personalize video stream (Bar-El, page 4, line 4).

Regarding claim 28, the recitation of "the moving or animated image portrays one or more items selected from the group of plants, landscaping and live animals" is given

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little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other "moving or animated image portrays one or more items" already disclosed by the combination of Rom and Bar-El.

**Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,307,658 to Rom in view of World Publication No. 99/26415 to Bar-El et al. and in further view of U.S. Patent No. 6,017,157 to Garfinkle et al.** The combination of Rom and Bar-El substantially discloses the claimed invention, however, the combination does not disclose the emailing of one or more of the images. Garfinkle, on the other hand, teaches the emailing of an image (col. 5, lines 21-23).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of Rom and Bar-El, to include the emailing of the image, in order to email the image to another party (col. 5, lines 21-23).

**Claims 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,307,658 to Rom in view of Official Notice.** Rom substantially discloses the claimed invention, however, it does not disclose the image provided by a potential buyer can be saved on a website for later reuse to provide reusable files from one or more images. The Examiner takes Official Notice that one would save the image on a website for later reuse to provide reusable files to eliminate the buyer from constantly providing the image when logging into the website each time.

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the image provided by a potential buyer to be saved on a website

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for later reuse to provide reusable files of the image in the method of Rom because saving the image on a website to provide reusable files of the image would eliminate the constant providing of the image by the buyer every time the buyer logs into the website.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,678,306 to Blank discloses a system and method for editing digital images in three dimensions.

U.S. Patent No. 6,005,969 to Thomas et al. disclose a method and system for the imaging and design of floor coverings or other fabrics.

U.S. Patent No. 6,624,843 to Lennon discloses an image capture system used to capture reference images of models wearing apparel items.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 703-305-5246. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 703-308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mtot  
January 10, 2005

  
**JAMES MCCLELLAN**  
**PRIMARY EXAMINER**